

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

LUCILLE FERENCE,

Plaintiff,

v.

UNISEN, INC.,

Defendant

CIVIL NO. 2003/0161

TO: Edward L. Barry, Esq.
Robert A. Waldman, Esq.

ORDER FOR CONFERENCE BETWEEN ATTORNEYS

THIS MATTER is before the Court upon Defendants' Motion to Compel (Docket No. 16). In support of its Motion, Defendant references correspondence dated September 10, 2004, from Defendant's counsel to Plaintiff's counsel requesting contact "within the next ten (10) days to discuss the issue." Motion, Ex. F.

Local Rule of Civil Procedure 37.1 provides, in relevant part:

No motion relative to discovery shall be accepted for filing unless accompanied by a certificate of counsel for the moving party, stating that counsel have met and conferred for purposes of amicably resolving issues and stating why they are unable to agree or stating that opposing counsel has refused to so meet and confer after reasonable notice. Counsel for the moving party shall arrange the conference. If the court finds that opposing counsel has willfully refused to meet and confer or, having met, willfully refused or failed to confer in good faith, the court may impose such sanctions as it deems proper.

LRCi 37.1. The correspondence attached as Exhibit F is offered as proof of Defendant's compliance with the above-referenced rule. Although not the most egregious example that has come to the Court's attention, such correspondence is inadequate to demonstrate compliance with the rule. Moreover, Plaintiff's counsel's non-response to Defendants' request may not be interpreted as an outright refusal. As the rule states, "Counsel for the moving party shall arrange the conference." In this particular instance, a follow-up telephone call or correspondence offering alternate dates on which Defendant's counsel was available to meet, at the very least, were required.

Because the Court finds that counsel have not met and conferred as required by LRCi 37.1, nor was an adequate attempt even made, the Court will strike Defendant's Motion to Compel at this time and order Defendant's counsel to arrange a conference to discuss Defendant's discovery requests which are the subject of Defendant's said Motion. Any failure or refusal by opposing counsel to so meet and confer will result in appropriate sanctions. If, after such conference, the parties still are unable to reach agreement with regard to any of the disputed discovery requests, Defendant may re-file their motion, detailing the results of the conference of counsel.

Accordingly, it is now hereby **ORDERED**:

1. Defendants' Motion to Compel (Docket No. 16) is **STRICKEN**.
2. Counsel **shall** meet and confer, at a time and place mutually convenient, on or before **Friday, October 29, 2004**.
3. If, after such conference, any dispute regarding any or all of the discovery requests at issue remains, Defendant may re-file its motion to compel, with a proper LRCi 37.1 certification and including the details of such conference of counsel.
4. Any failure or refusal to meet and confer or to meet and confer in good faith shall result in sanctions.

ENTER:

Dated: October 8, 2004

_____/s/_____

GEORGE W. CANNON, JR.
U.S. MAGISTRATE JUDGE

ATTEST:

WILFREDO F. MORALES
Clerk of Court

By: _____
Deputy Clerk